

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION**

FEDERAL TRADE COMMISSION)	
)	
and)	
)	
STATE OF OHIO)	
)	
Plaintiffs,)	
v.)	No. 3:11-cv-47 (DAK)
)	Hon. David A. Katz
PROMEDICA HEALTH SYSTEM, INC.)	
)	
Defendant.)	

**PLAINTIFF’S MOTION FOR MODIFICATION OF
PRELIMINARY INJUNCTION ORDER**

Plaintiff Federal Trade Commission (the “Commission”), by its designated attorneys, moves the Court, pursuant to the Court’s inherent authority, for a modification of its March 29, 2011 preliminary-injunction order, which enjoined defendant ProMedica Health System, Inc. (“ProMedica”) from further consolidating its operations with those of St. Luke’s Hospital (“SLH” or “St. Luke’s”) pursuant to a joinder agreement consummated on August 31, 2010 (the “Acquisition”). The Court’s order requires that ProMedica abide by the terms of the Hold-Separate Agreement (“HSA”) previously entered into between ProMedica and Commission staff. The Court entered the order under § 13(b) of the FTC Act after weighing the equities, considering the Plaintiffs’ likelihood of success of the merits, and determining such order would be in the public interest.

During the Commission’s pre-complaint investigation of the Acquisition, ProMedica agreed with Commission staff to a limited Hold-Separate Agreement, which sought to

temporarily maintain the competitive viability of St. Luke's by preventing ProMedica from, among other things, transferring or eliminating SLH services, renegotiating SLH's health-plan contracts, or raising the rates it charges to health-plan customers and members – namely local employers and employees in Lucas County.

Plaintiffs filed a complaint in this Court seeking a temporary restraining order and preliminary injunction under § 13(b) of the FTC Act preventing ProMedica from further integrating its operations with those of its competitor St. Luke's, pending resolution of the Commission's administrative proceeding, and any appeals, on the competitive merits of the Acquisition. On March 29, 2011, after discovery, extensive briefing, and a two-day preliminary-injunction hearing before the Court on February 10-11, 2011, this Court granted the Commission's Motion for Preliminary Injunction, ordering ProMedica to continue to abide by the terms of the HSA.

On May 31, 2011, a full administrative trial concerning whether ProMedica's Acquisition of St. Luke's violated Section 7 of the Clayton Act commenced before FTC Administrative Law Judge Michael Chappell. On December 5, 2011, Judge Chappell issued an Initial Decision finding that the Acquisition violated Section 7 of the Clayton Act and ordering ProMedica to divest St. Luke's. That decision is now on appeal to the full Commission.

In response to this material change in circumstances and its likely impact on ProMedica's economic and strategic incentives, Plaintiff hereby requests that this Court modify its March 29, 2011 order to appoint a Hold-Separate Monitor to verify and monitor ProMedica's compliance with the HSA until the Commission issues its final decision, at which time Judge Chappell's order will become final or the Commission will decide to modify or reverse Judge Chappell's order.

This motion is supported by the attached memorandum of points and authorities.

The undersigned attorneys notified ProMedica's attorneys prior to the filing of the present action. They have indicated that they will oppose the motion.

A proposed order is attached.

Plaintiff requests oral argument.

Dated: December 19, 2011

Respectfully submitted,

/s/ Matthew J. Reilly

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th of December, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Alexis J. Gilman

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